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## DEPARTMENT OF STATE

Washington, D.C. 20520

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~~CONFIDENTIAL~~Attention MRS MULLETTE

Keep this study together. June 1, 1972

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RFMEMORANDUM FOR MR. HENRY A. KISSINGER  
THE WHITE HOUSESubject: Report on February/March, 1972  
Meeting of the U.N. Seabed  
Committee for the Third Law of  
the Sea Conference

Attached is a report regarding the Law of  
the Sea Negotiations held from February 28 to  
March 30, 1972. This report is submitted pursuant  
to NSDM-157 and has been formally cleared by the  
various agencies.

  
Theodore L. Eliot, Jr.  
Executive Secretary

## Attachment:

Report on February/March, 1972 Meeting on the  
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July 12, 2005~~CONFIDENTIAL~~REPORT ON FEBRUARY/MARCH, 1972 MEETING ON THE U.N. SEABED  
COMMITTEESubmitted by John R. Stevenson, Chairman  
Inter-Agency Law of the Sea Task Force *JRS*

This memorandum reports on the February/March, 1972 meeting of the U.N. Seabed Committee, acting as preparatory committee for the 1973 Law of the Sea Conference and is submitted pursuant to NSDM-157. A summary of pertinent bilateral discussions between members of the U.S. Delegation and foreign representatives is annexed.

I. Procedural and Organizational Developments

This was the third meeting of the Committee since it was charged with preparations for the 1973 Law of the Sea Conference. The five week session was held in New York from February 28 to March 30. The People's Republic of China, Fiji, Finland, Nicaragua and Zambia were added to the Committee bringing membership to a total of 91 (one Eastern European still to be designated).

In Sub-Committee I, Paul Engo of Cameroon replaced Earle Seaton as Chairman and Charles Mott of Australia replaced Anton Prohaska as Rapporteur. The Committee informed the U.N. Secretariat that funds should be earmarked for two LOS meetings in 1973 -- five weeks in the Spring and eight weeks in the Summer. The next UNGA will decide on the sites of the sessions and whether these sessions will be the actual Conference or further preparatory meetings of the Committee.

The advancement of work in the Committee as a whole was considerably slower than the U.S. desired but progress varied within the three Sub-Committees. To a large extent, preoccupation with procedural problems precluded substantive negotiations at this session. Sub-Committee I (seabeds) moved in a constructive way by undertaking structured debate on an agreed work program. This led to the formation of a 33-member working group (U.S. included), with the mandate to prepare draft articles on principles for a seabeds regime as the first section of the treaty. Sub-Committee II (territorial sea, straits and fisheries) made little progress while manifesting the worst sort of regional bloc politics. In the

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and, Sub-Committee II failed to agree on a comprehensive list of subjects and issues which would, in effect, provide the initial agenda for the Conference. Sub-Committee III (pollution and research) continued to engage in general discussion but did specifically agree to a broad program of work proposed by Canada, which on its face appears overly ambitious.

## II. Substantive Developments

### A. Main Committee

#### 1. Statements by New Members

China clearly indicated in her first statement that she would seek leadership of the so-called "third world" against the U.S.S.R. and U.S. as superpowers. In a polemic attack, she charged that the superpowers were attempting to dominate the ocean and plunder its resources. The U.S. Representative rejected these assertions. China also endorsed the right of all States to determine the limits of their own territorial sea, including the right of the Latin Americans to make 200-mile territorial sea claims. China also introduced a territorial dispute with Japan by strongly attacking Japanese assertions of sovereignty over the Senkaku (Tiaoyu) Islands in the East China Sea.

Finland supported a 12-mile territorial sea, depth and distance criteria for determining seabed limits, freedom of scientific research and urgent measures to prevent marine pollution. Fiji pressed for recognition of her special positions on mid-ocean archipelagoes whereby an international "right of communication" over the enclosed waters would be preserved. Zambia, as a landlocked State, stressed the need for a right by all States of free access to the high seas and the "common heritage" of the international seabed area.

#### 2. Statement by Strong

Secretary-General Maurice Strong of the Environmental Conference addressed the Main Committee and stressed the need for close cooperation between the Stockholm meeting and the Seabed Committee. He suggested that overall legal provisions on the marine environment should be formulated in final form at the LOS Conference.

#### 3. Tuna Boat Seizure Legislation

Representatives of Chile, Ecuador and Peru, supported by Brazil and China, accused the U.S. of imperialism for enacting legislation which would eliminate aid to Ecuador

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because of the tuna boat seizures beyond 12 miles. The U.S. Representative rejected these accusations and pointed out that U.S. Actions were fully consistent with international law.

#### 4. Moratorium Questions and Interim Policy

One disturbing element in both the Main Committee and Sub-Committee I was the revival of the divisive issues inherent in the so-called "Moratorium Resolution" passed by the General Assembly in 1969 over the opposition of the United States and many others. The issue came to the fore as a result of an alarm sounded by Chile that 25 companies from developed countries were planning to test the Japanese continuous bucket method in the Pacific next Summer and that an interim policy bill had been introduced in the U.S. Congress which would authorize exploitation activities in the deep seabed prior to the establishment of a multi-lateral regime. The Chilean representative asked the States whose companies were involved, to provide full information about the consortium and to explain plans regarding exploration activities in the deep seabed.

Peru strongly supported Chile and asked for assurances that the developed countries would refrain from exploiting the deep seabed before agreement on an international regime. Other Latin American (e.g. Brazil) and several Middle Eastern countries such as Iraq and Algeria also criticized the consortium activities and pending U.S. legislation. Turkey on the other hand opined that the most effective way of insuring observance of the Moratorium Resolution would be to establish the regime as quickly as possible. Belgium and France observed that the proposed activities were experimental in nature.

In response to the request of the Chilean Representative, Dr. McKelvey, Director of the U.S. Geological Survey, gave a factual presentation on the activities of U.S. firms engaged in deep sea mineral studies and on the plans of the consortium, to the extent information was available. In addition he gave a brief summary of progress in the advance of knowledge and technology concerning deep sea manganese-oxide nodules.

The action of the Interior Committee under Senator Jackson in presenting the Metcalf Bill (S.2801) which would authorize

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licensing by the U.S. of mineral exploitation in the deep seabed prior to the establishment of an international regime was cleverly linked to proposed experimental mining activities by an international consortium. These developments were strongly and emotionally attacked and served as a rallying call for developing countries to unite against the developed States, particularly the U.S.

On the final day of the session, Kuwait, supported by twelve LDC's plus China, proposed a decision by the Committee which would call for a moratorium on any operations aimed at commercial exploitation in the deep seabed before the establishment of the regime. The resolution would declare that all such arrangements would have no legal validity and would not form the legal basis for any claims. The Committee will consider the Kuwait proposal at the start of the next session.

#### B. First Committee

Paul Engo (Cameroon) assumed an active leadership role in Sub-Committee I and evidenced a clear desire to conduct the meetings in a businesslike manner. He deserves personal credit for much of the progress made during the March session. The program of work proposed by Jamaica and Australia at the 1971 Summer session was adopted after amendment and five meetings of Sub-Committee I were devoted to debate on item I: Status, scope and basic provisions of the regime based on the Declaration of Principles, Resolution 2749 (XXV).

#### 1. Item 1 Discussion

At Engo's urging, the U.S. was the first to speak on item 1. We limited ourselves to a restatement of previously expressed positions on the Declaration of Principles and general comments on the regime as outlined in the draft U.S. convention. One of the principal objectives of the U.S. statement of March 6 was to encourage others to commence structured discussion of specific issues.

The consideration of item 1 revealed that wide differences of opinion existed as to the meaning and effect of the notion of "common heritage". Some developing countries urged that the concept was the foundation for the establishment of international community ownership of the deep seabed area and its resources and that, therefore, all activities in relation thereto could only be carried on when authorized by international machinery. Other States,

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including the U.S., took the view that the concept of common heritage had no independent significance and had to be defined by reference to the remaining principles. Many States advanced the position that the regime for the seabed should include living as well as non-living resources. Others pointed out that this issue would be determined by the limits which were adopted. The Japanese argued that living resources should not be included in the seabed regime in any case.

There appeared to be some difference of outlook as to whether or not the principles in the future treaty would be binding on all States, whether or not parties. If it were to be universal, the States that addressed themselves to the issue indicated that there should be an exceptionally high number of ratifications before non-parties could be considered bound.

One of the recurring themes, particularly among the Eastern European Group members, was that the international seabed area should be used exclusively for "peaceful purposes". The precise meaning of this term was not agreed upon but there seemed to be wide acceptance of the notion that the Seabed Committee was not the proper forum for disarmament discussions. Except for Pardo of Malta, there appeared to be no questioning of the fact that the superjacent waters were outside the mandate of Sub-Committee I except to the extent they might incidentally be affected by the seabed regime. Pardo continued to urge a comprehensive approach to "ocean space" as a whole.

Some representatives questioned the exact relationship between regulations concerning exploration and exploitation of resources and the possible need to regulate scientific research and marine pollution, especially with regard to deep drilling. But this subject was not dealt with in depth.

## 2. Item 2 Discussion

Specific discussion on item 2 of the Jamaican/Australian program of work centered around the powers and functions of the international machinery for the seabed beyond national jurisdiction. One major, unresolved issue concerned whether or not the Authority should itself engage in direct exploitation of resources. Many countries stated that the Authority should have the right to engage in exploration and exploitation of the resources rather than merely the right to license exploitation. The Latin American draft seabed paper proposes the creation of an Enterprise

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which would conduct all deep seabed exploration and exploitation activities either by itself or in joint ventures with private companies. Other States, such as Australia, have indicated that they are not opposed, in principle, to the Authority engaging in direct exploitation when conditions permit. The U.S. position is contained in our draft seabed convention wherein we propose that the International Authority regulate and license exploration and exploitation, but that it not conduct such activities itself. The U.K. has suggested a quota allocation system whereby each State would periodically select areas for exploitation up to a fixed percentage of the international seabed area. Under this approach, States would be free to decide on the means of exploitation within allocated areas.

The general debate indicated that the LDC's are pushing for a strong international regime for the deep seabeds based on a one nation-one vote principle. Many LDC's want this regime to include a production and marketing control mechanism (OPEC style), to provide for transfer of technology from the developed countries, and management by an international operating agency.

A troublesome question for the future will be on the question of voting and membership on the Council. Many States spoke in favor of a one nation-one vote system for decision making within the Council and equitable regional representation. Most LDC's were strongly against any permanent membership as well as against veto or weighted voting schemes that would favor the developed countries. The US has proposed a Council of six designated members who are the most technologically advanced States, and eighteen elected members, with decision requiring a majority of both groups. The U.S.S.R. and Eastern European bloc laid great stress at this session on the Soviet proposal for consensus voting on the basis of regional groups in the Council, without indicating much flexibility.

There was general agreement on the need for a means of dispute settlement, and many States felt that a compulsory system was desirable. While there did not appear to be general acceptance of a particular mechanism, recourse to the International Court of Justice, special tribunals and ad hoc procedures were commonly mentioned.

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The subject of possible adverse economic consequences for land-based producers as a result of seabed resource exploitation continued to receive attention, especially from certain Latin American States and from oil-producing States on the Persian Gulf. These countries urged comprehensive powers for the Authority to control production and marketing as well as to minimize price flexuations.

In connection with the powers of the Authority, there were differences of view on whether or not the Authority should undertake scientific research and whether or not it should control such research as it related to the seabed. There were also questions about the extent to which the Authority might regulate marine pollution connected with the seabed.

Subsidiary organs of various types were discussed but no general trends emerged in favor of organs other than an Assembly, Council and Secretariat. Most discussion centered on the composition or membership of these organs. Some mention was made of the need for developing countries to be trained in seabed technology and for developed States to transfer technology. Direct participation by developing countries in exploitation, rather than revenue sharing, dominated the discussion of equitable sharing of benefits from the seabed. For its part, the U.S. indicated that it was prepared to negotiate on a number of details regarding the equitable sharing of benefits.

In speaking on item 2 (including the intermediate zone) on March 21, the U.S. limited its remarks to a brief outline of views on the major issues. We reviewed the international machinery proposed in our draft seabed convention and stressed the advantages of the intermediate zone concept, a licensing system and other matters encompassed under item 2. We indicated that there could be fuller reliance on coastal State resource management machinery in the intermediate zone and a willingness to consider changes in our position on revenue sharing.

### 3. Limits

A majority of States continued to stress support for an exclusive resource zone; about twelve countries which included the U.S. and principally members of the landlocked/shelf-locked group continued to express support for an intermediate zone with a mixture of national and international jurisdiction. The Netherlands, supported by Belgium, formally proposed the establishment of a working group to consider the concept of an intermediate zone. This idea was opposed by Canada, Mexico, Tanzania, Peru, Jamaica

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and Kenya on various grounds and the proposal was not pressed upon the Committee at this session.

Singapore, supported by Afghanistan, and opposed by certain Latin and Arab States, suggested that the Secretariat undertake a study of the economic consequences of various limits proposals before the Committee based on available knowledge. This proposal was adamantly opposed by Brazil, Ecuador and Chile which apparently feared any derogation from the 200-mile figure. The U.S. agreed to cooperate with the Chairman's request for information by making available a summary of results from certain geographic studies we had undertaken. The Sub-Committee adopted a compromise suggested by Australia that the Secretariat should collect the data and then give an opinion on the feasibility of the project, transmitting to Committee members the information furnished to it by any Committee member.

France expressly endorsed a 200- mile limit as an outer boundary for sovereign rights over the seabed resources. (The French position may have been influenced by the fact that they control a number of islands around the world which could serve as basepoints for extensive seabed entitlement.)

#### 4. Establishment of Working Groups

It was significant that a working group was constituted on item 1 - the legal regime - of the program of work. The U.S. had hoped that the working group would meet between the New York and Geneva sessions and this was proposed by Australia and supported by Malta, Canada, Senegal, Poland, Nigeria, USSR, and Kenya. It was rejected by the Chairman, however, after France, Indonesia, Peru, Uruguay, Venezuela and Brazil spoke against the suggestion. It was finally agreed that the working group would meet on the first day of the July/August session in Geneva while the work of Sub-Committee I would be postponed for the first week. The Chairman of the working group prepared a comparative table of all the proposals which related to item 1. This table was intended to help organize the working group discussion and aid them in their drafting efforts.

The Chairman stated that four more meetings at the start of the July/August session would be devoted to specific discussion on item 2. (machinery) of the program of work. A second working group would then be constituted to draft proposed treaty articles on the international machinery.

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C. Second Sub-Committee1. List Issue

The most difficult problem faced by the Second Sub-Committee was the question of a list of subjects and issues which would presumably form the basis for the agenda of the LOS Conference. A number of separate lists had been proposed at various times (Afro-Asian, Eastern European, Latin American, Norwegian, Maltese). The Asian, African and Latin American regional groups had been preparing a so-called "Group of 77" list since last summer and were unwilling to proceed with structured discussion of other topics at this session until this list was completed. Their list, the contents of which were very closely held, was presented almost at the end of the meeting. Some co-sponsors took an uncompromising attitude on amendments, including a threat by several to move from the consensus system to voting procedures. The handling of the list issue represented the worst possible example of U.N. dependence on regional groups. Many of the developing countries of Africa and Asia appeared to be more interested in maintaining a unified LDC position vis-a-vis the developed countries than they were in forcing the Latin American countries to engage in constructive, substantial negotiations. Most delegations, including a number of developing countries, were excluded from the secret Group of 77 discussions on the list. This led to a polarization on such issues as straits and exclusive economic zone without an opportunity for substantive exchanges of view in open debate.

The Chairman of the Group of 77, Ambassador Yango of the Philippines, submitted their agreed list of issues two days before the end of the March meeting. This list was co-sponsored by 56 countries, predominately from the developing world. Interestingly, Iceland, Romania, Spain and Yugoslavia were among these co-sponsors. Conspicuously absent from the list of co-sponsors were the group of developing landlocked and shelf-locked States.

When he presented this list, Yango stated that the list was intended as a framework for discussion and for drafting of articles until such time as the agenda for the LOS Conference was adopted. Their list was submitted as a basis for further negotiation within the Sub-Committee with a view to arriving at a final list acceptable to all regional groups. A number of non-co-sponsors criticized the list because of omissions and lack of balance. None

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of three principal U.S. LOS proposals, i.e., free transit of straits, intermediate seabed resources zone, and species concept of fishing management, elicited sufficient support in the Group of 77 to be specifically included on the proposed conference "list" of subjects and issues.

An effort was made to negotiate with the Group of 77 on the questions in dispute. However, the "Western European and Others Group" failed to agree on a contact group to represent the WEO's in these negotiations, and the contact group of the co-sponsors refused to attend the negotiating meeting on the grounds it would meet only with other contact groups. The WEO group did meet with the Eastern Europeans, the landlocked and shelf-locked States, and the U.S. but no agreement was reached on a common list of amendments.

The landlocked/shelf-locked group displayed cohesiveness as a bloc on this issue at this session. This group has grown to about 20 members and has representation from all regional groups. Their ability to act as a bloc was illustrated when they detracted from Group of 77 solidarity by not co-sponsoring the list of subjects and issues submitted by many other members of the Group of 77. Instead, eight members of the bloc formally proposed amendments to the Group of 77 list which more accurately reflected the views of landlocked and shelf-locked States.

#### U. S. Reaction to List Issue

The U.S. objected to the list proposed by the members of the Group of 77 on the ground that certain sections were prejudicially formulated. Specifically, the proposed list only mentioned innocent passage and did not refer to free transit for straits. We were also concerned with the heading which referred only to an "exclusive economic zone" and we suggested the addition of "or other coastal State economic jurisdiction or rights". The U.S. Representative urged that the list be balanced or neutral in its formulation and pointed out that the U.S. had introduced a draft article on straits which had received both support and opposition. He stressed that the U.S. did not seek to deny others the opportunity to express their opposition, but by the same token we were not willing to accept a formulation which attempted to deny the U.S. an opportunity to press vigorously for a position which we regarded as of vital importance. Mr. Stevenson stated that while the U.S. was willing to accept any of several neutral formulations, we could not accept a prejudicial formulation. He stressed that this was an important issue to

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the U.S. and that the U.S. could not accept a list that did not place our position on an equal footing with the positions maintained by other delegations.

At the final meeting of the March session, it was agreed that Chairman Amerasinghe would, in cooperation with Sub-Committee II Chairman Pohl, consult with members prior to the Summer session in an attempt to reach a general agreement on the comprehensive list of subjects and issues.

## 2. Proposed Fisheries Working Group

On March 15, the U.S. Representative expressed regret at the lack of progress on the list of issues and urged the Sub-Committee to begin substantive discussions on at least some items clearly within Sub-Committee II's terms of reference. Mr. Stevenson said he believed that a large number of delegations would be interested in proceeding with more specific discussions on the subject of fisheries and he suggested that the Chairman appoint a working group to discuss the issue in more detail with a view toward drafting fisheries articles. Alternatively, Mr. Stevenson suggested that the Sub-Committee commence a short debate on fisheries prior to the formation of a working group. Several other delegations concurred in expressing disappointment in the lack of progress and suggested several various ways to break the impasse. Differences emerged on the feasibility of setting up working groups on specific substantive issues, such as fisheries. The U.S. renewed its proposal for a fisheries working group on March 30 receiving some support, (Australia and Kenya) and opposition (Peru, Ecuador and Brazil). Canada also thought the proposal was premature. Without a consensus, the Chairman ruled that the U.S. proposal would have to be held in abeyance.

### Substantive Debate

In spite of the slow progress in organizing the work, there was wide-ranging and often substantive debate on a variety of key issues. While no consensus was reached in any area, the debate did reflect a growing sophistication in the Committee.

## 3. Straits

Some statements were given on territorial seas and straits and on whether or not the doctrine of innocent passage was adequate. The U.K. specifically supported the U.S. Article II on straits while the Soviets again

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argued for a limited right of free transit, based on selected straits that would be subject to certain restrictions to protect the coastal State. Several countries (Indonesia, Tanzania, Spain among others) expressed strong opposition to the U.S. article on free transit through and over international straits. Italy urged that different straits be dealt with by different doctrines depending on their width, importance and characteristics. Greece expressed support for the adequacy of the doctrine of innocent passage. There was no significant support indicated for free submerged transit and overflight rights.

Indonesia and the Philippines strongly argued for international recognition of the archipelagic concept with the general support of Fiji and one or two other island States such as Mauritius.

#### 4. Spain

Spain continued vigorously to oppose the U.S. position on free transit through and over straits used for international navigation. (Since the exchange of letters between President Nixon and Franco, Spanish attacks on the U.S. position on straits have become stronger.) Spain circulated a sharply worded memorandum to developing countries which equated U.S. and Soviet political and strategic reasons for wanting a straits article. They accused both of attempting to victimize strait States, to use naval power to pressure other countries and possibly to intervene in their internal affairs. The U.S. and Soviet proposals were characterized as being contrary to U. N. Charter principles.

#### 5. Fisheries

One of the chief subjects of debate was the fisheries regime. Several countries, including the U.S.S.R., U.K. and Japan, expressed opposition to broad exclusive fishing zones. Most other delegations who spoke to this issue favored a zonal approach, usually expressed as a broad exclusive zone but sometimes referred to as a preferential zone for the coastal State. States supporting the zonal approach included Iceland, Tanzania, Mauritania, Mexico, India and Kenya, with the latter two taking a somewhat more moderate stance than at the prior session. The U.S.S.R. moved slightly in the direction of the U.S. proposal by expressing support for preferential rights for developing

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Coastal States.

Canada, supported by France, made a major statement on fisheries which had many similarities with the U.S. position. The Canadian approach recognized that highly migratory species should be managed by an international authority and coastal and anadromous species by the coastal State as custodian for the international community under internationally agreed principles.

Canada also proposed that there be a meeting of technical experts on fisheries under the aegis of FAO which would report to the Seabed Committee prior to the LOS Conference. This was supported by the U.S.S.R. and France and opposed by the U.S. and Australia. (Subsequent to the March session, at an FAO fisheries conference in Rome, it was agreed that a Canadian financed technical conference participated in by technical fisheries experts would take place in Ottawa early in 1973, probably during February.)

6. U. S. Fisheries Speech

A major presentation of U.S. views on fisheries was made by the U.S. on March 29. It included many modifications to the U.S. fisheries position taken at the July/August, 1971 session. We stated that the U.S. continued to consider the species approach to be the most effective and rational way to deal with fisheries management and conservation. We also stressed that the U.S. continued to believe that highly migratory oceanic species (e.g., tuna) could be managed effectively only through international organizations. In light of many of the comments on the earlier U.S. draft articles on fisheries, the U.S. was prepared to consider whether responsibility for conservation and management of coastal and anadromous (e.g., salmon) species could rest primarily with the coastal State, subject to agreed international standards and review. The U.S. was prepared to consider whether clear regulatory authority could be vested in the coastal State with respect to coastal species adjacent to the State's coasts and anadromous species throughout their migratory range on the high seas.

More specifically, the U.S. fisheries speech reflected several changes in the U.S. position, including: (a) de-emphasis of the roles of international and regional organizations in favor of greater and clearer coastal State control, and (b) elimination of major restrictive requirements on how coastal States exercise control over coastal stocks. We also indicated that the coastal State could levy reasonable fees for management of the coastal stocks. We clarified, but did not change, our position that the U.S. favors a negotiated settlement of historic fisheries (i.e. the

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rights of distant water fishermen off the coasts of other States).

#### 7. U.K. - Iceland Fisheries Dispute

The U.K. continued expressly to support the U.S. LOS position more than any other ally. However, the British are becoming increasingly uneasy about pollution hazards in the English Channel. Moreover, the dispute over the 50-mile exclusive fisheries claim of Iceland will affect both countries' attitudes on LOS matters. The U.K., in particular, was unusually sensitive about the U.S. fisheries speech. There was some indication that the Icelanders are urging other States to make unilateral fisheries claims which would support their own actions.

#### D. Third Sub-Committee

Sub-Committee III, charged with the subjects of marine pollution and scientific research spent considerable time discussing the coordination of various international activities regarding marine pollution and trying to identify the areas in which the LOS Conference could most usefully concentrate its efforts.

Sub-Committee III was addressed by Admiral Langenaar of the Intergovernmental Oceanic Commission, Mr. A. W. H. Needler, Chairman of the December, 1970 FAO Technical Conference on Marine Pollution, Mr. Jens Evenson of Norway who described the Oslo Convention on ocean dumping and Mr. Paul Evans of the International Maritime Consultative Organization who discussed the work of IMCO in the field of marine pollution and in traffic separation schemes in congested ocean areas. Langenaar reported that at the preparatory committee of government experts formulating Ocean Data Acquisition System (ODAS) Convention, a consensus emerged that the convention should not prejudice LOS decisions elsewhere.

#### Work Program

The Canadian delegation introduced a draft Program of Work which proposed, inter alia, that Sub-Committee III receive reports from other international organs concerned with marine pollution and that it make recommendations to the Stockholm Conference, IMCO and IOC. The Canadian program proposed follow-up action by the Seabed Committee on marine pollution principles and ocean dumping. The

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Canadians suggested the inclusion of a world-wide dumping convention in the work of Sub-Committee III. The Sub-Committee, after some debate and corridor negotiation, adopted the Canadian proposal (as amended) for a program of work and agreed that the Sub-Committee's views on the preservation of the marine environment should be forwarded to the Stockholm Conference.

While the debate in Sub-Committee III was general and inconclusive, and no drafting was begun on treaty articles, the agreement on the program of work will presumably clear the way for a more effective approach to these issues at the next session of the Seabed Committee in July/August.

The most significant new development in Sub-Committee III was the emergence of an effort led by certain States such as Canada and Mexico to make that Sub-Committee the focal point for the consideration of all aspects relating to marine pollution, including pollution emanating from the land and air.

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PA/HO Department of State -  
E.O. 12958, as amended  
July 12, 2005~~CONFIDENTIAL~~BILATERAL DISCUSSIONS WITH OTHER COUNTRIESRELATED TO MARCH, 1972 SEABED COMMITTEE MEETINGI. Introduction

During the March, 1972 Seabed Committee meeting, members of the U.S. Delegation had a number of informal exchanges with foreign delegates which provided additional information that may not be apparent from the public record of the session. Some points made by foreign delegates in these discussions and, where noted, in some private conversations which the U.S. Representative had following the Seabed Committee meeting, are summarized from reporting cables in the following paragraphs.

II. Summaries of DiscussionsArgentina

Argentine representatives to the Seabed Committee stressed repeatedly the strong interest of the GOA in seeing that a final LOS treaty recognizes Argentine rights to 200 miles of fishery jurisdiction as well as jurisdiction over the seabed resources to the edge of the continental margin, which in some places may exceed 700 miles from Argentina's coast. They emphasized, moreover, that some coastal State control over research off their shores is necessary. With regard to benefit sharing from seabed resources, Argentine reps said that because of the GOA's large claim off their own coast, they cared little about sharing of benefits as a general principle.

The Argentine Foreign Minister privately told U.S. Representative Stevenson that Argentina wants to establish clearly the right of freedom of navigation beyond 12 miles. He expressed his view that all Latin American States, including Brazil, will accept this principle as part of a general LOS settlement. Regarding free transit through straits, the Foreign Minister was sympathetic to the U.S. position but stressed the importance of finding an international solution to pollution problems and navigational safety in straits. The Foreign Minister also appeared sympathetic when Stevenson emphasized the need to include international standards protecting other uses and against pollution, special treatment for highly migratory species of fish, a coastal preference regarding coastal species based on a capacity to catch, and compulsory dispute settlement. The Foreign Minister indicated his personal belief that it was important to achieve early international agreement; he

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regretted that the 1960 LOS Conference had failed by one vote to agree on territorial sea and fishing limits.

#### Canada

The Canadian representative (Beesley) indicated his personal view that coastal enforcement action against foreign vessels in a pollution control zone could be limited to preventive action when an actual or threatened polluting act is occurring. Inspection of vessels for compliance with internationally agreed standards would be handled by port States or internationally, perhaps with an international system of registry certificates. Canada is concerned with IMCO's slow progress in establishing international standards and its domination by maritime states.

#### Chile

The Chilean representative to the Seabed Committee (Zegers) claimed that within the past year over 60 countries had endorsed a 200-mile resource zone. He also confirmed that Mexico, Colombia and Venezuela might be able to provide a bridge between the U.S. and the extreme Latin position on the basis of a patrimonial sea compromise. He also confirmed the 200-mile figure had become an issue in itself without regard to the question of effective control over marine resources, particularly fish.

#### Colombia

One Colombian official (Fonseca) explained that his Government's law of the sea policy was related almost entirely to fears of Venezuelan "hegemony" in the Caribbean. He suggested that this fear was based on suspicion of Venezuelan arrogance and the steady growth of its military power. With respect to a patrimonial sea concept, he expressed the fear that Venezuelans may seek to use this doctrine to make the Caribbean a closed sea. Colombia wishes to keep the Caribbean open for the use of other countries, notably the United States, and would thus support a significantly narrower resource zone than, say 200 miles. Colombians continue to assure us that they support the U.S. position on straits and claim that a majority of Caribbean countries share this position. The Colombian permanent representative at the UN (Espinosa) indicated that a patrimonial sea or some form of economic zone was essential to an overall LOS accommodation, and that such a zone would include express protection of navigation and overflight rights beyond 12 miles. He reaffirmed

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that some reference to 200 miles would be indispensable in getting agreement with all Latin American countries. He confirmed that Colombia was not authorized to support the U.S. position on straits at this time.

The Colombian Foreign Minister told U.S. Representative Stevenson privately that he thought it important to achieve first a regional LOS agreement and then agreement among all Hemisphere countries. He was skeptical of whether the UN could reach a general agreement because of the diversity of interests represented and its procedures. The Foreign Minister thought that the Caribbean countries would accept a patrimonial sea where coastal States would have exclusive economic rights between 12 and 200 miles, depending on geography, resources and other circumstances.

#### Fiji

Fijian representatives have told us that they were attempting to be the middle man on the archipelago issue between the United States, on the one hand, and Indonesia and the Philippines, on the other. Fijian representatives said that true archipelagoes were Mauritius, Indonesia, the Philippines, Solomon Islands and the Bahamas; the Galapagos Islands would not qualify. Fiji's principal concern appears to be control over fishing and the natural resources on the Fiji plateau. They are also worried about pollution caused by ships from New Zealand and Australia which use ocean passages through the islands en route to the United States.

The Fiji representative had expressed that in their geographical situation they were not that concerned about submerged transits, overflights, and ships passing through Fiji islands; however, he did indicate at one point that Fiji would probably like to have advance notice of submerged transit because they were developing three oil rigs on their shelf.

#### Greece

Greek representatives in New York expressed their deep concern with possible proposals for demilitarization of the Mediterranean. (Libya was reported to have made

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such a proposal for the agenda of a suggested meeting of Mediterranean countries to be held some time before the summer Seabed Committee meeting.) Greece stated that to a great extent their security required the continued presence of the Sixth Fleet in the Mediterranean.

The Greek representatives stated they were under strict orders from their government to support only innocent passage in straits and to oppose any form of free transit through straits. Accordingly, Greek opposition to free transit was based on security interests; namely, their concern about Soviet submerged transits and overflights, and their national problem with Turkey over Cyprus. They further expressed that the Greek delegation did not deem it necessary to have a general revision of the regime applicable to straits which are located within territorial waters. The Greek delegates shared the opinion of other delegations as underlined in past sessions that any agreement on the subject of limits should not be inextricably linked with any change in existing international law and practice. If, however, on this subject of innocent passage there is a wide feeling that this notion of innocent passage has to be clarified, the Greek delegation, in view of safeguarding the freedom of navigation, would have no objection to elaborating the rules governing innocent passage.

#### India

One Indian representative (Ranganathan) stated that India had its own interests in achieving free transit with respect to straits but would not be able to become an advocate of this position. He did not agree with the underlying assumptions of U.S. foreign policy, which give rise to the necessity for free transit and he cited the deployment of the Enterprise. In addition, he wondered whether deployment of a new generation of missile submarines really made it necessary for the US to acquire a right of submerged transit through straits in a treaty that would not in any event come into effect until quite a number of years from now.

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#### Indonesia

It was clear in conversations with Indonesian representatives in New York that they are strongly opposed to our free transit article on straits. However, it was indicated that Indonesia would be willing to discuss a trade-off involving a willingness to designate certain corridors of its archipelagoes within which transit could occur provided general advance notification is given, in exchange for support for the archipelago concept. Further, these qualified transits pertained only to designated corridors and did not apply to use of the high seas within the archipelago which are considered internal waters by Indonesia.

#### Japan

Japanese representatives to the Seabed Committee indicated a number of times that the GOJ is considering taking a more sympathetic attitude toward archipelagoes. They appear more willing to consider the possibility of accepting archipelagoes in relation to the Philippines and Indonesia than with regard to Malaysia. Japan has reached no conclusion on this point, however. It was suggested that since Japan has many islands itself, it might find the archipelago theory suitable for Japan.

#### Kenya

Kenyan representatives at the Seabed Committee meeting said that they favored a 200-mile exclusive resource zone as did the Afro-Asian group generally. Coastal State economic interests in the zone would be specifically limited and other uses of the area protected. The coastal State would have to license foreign fishing in the zone to the extent that it could not catch fish itself;

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a license could be required and conditions attached in the form of an obligation to either train coastal State personnel in fisheries or to process fish in the coastal State. It might be possible to have exceptions for highly migratory oceanic species and anadromous stocks. With respect to a seabed regime, they preferred that it begin at the edge of the territorial sea and extend to either 200 miles or 200 meters, whichever was further. In the seabed area, the coastal State should have control over research related to economic interests and should be consulted concerning other research. Regarding marine pollution, Kenya was quite concerned about pollution from oil tankers and was skeptical that flag states could be relied upon to enforce any agreed international pollution control standards.

#### Mexico

In her public statement, Mexico supported a fishery zone between 12 and 200 miles. Ambassador Castaneda in private conversation admitted that he had been criticized within his own government for his support for a coastal State fishing preference based on capacity within a fishing zone rather than a coastal State exclusive fishing zone. Castaneda confirmed that Mexico intended to continue working with Colombia and Venezuela in seeking a middle ground between the U.S. and Latin America.

#### Norway

Norway expressed concern about the application of a free transit right to its territorial waters, particularly in view of its long coastline dotted with many islands. They feared that some countries, particularly the Soviet Union might begin to consider the passages among those islands as international straits and thus act as though a free transit right applied to those waters. Norwegian representatives also expressed their view that NATO did not consider law of the sea problems collectively; rather the members of NATO consider LOS as a subject which affects them individually. Pointing out that our earlier security briefings in the NAC on law of the sea had not been persuasive, the Norwegians suggested that we make an effort to explain at a high level the security objectives related to our straits article. The Norwegian representatives, however, did give the impression that they would support the U.S. position on straits in private discussions, but Norway was not prepared to provide public support since the issue has not been resolved within their government.

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Peru

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The Peruvian Delegate to the Seabed Committee (Arias-Schreiber) informed us that Peru and other Latin Americans had developed an understanding with Spain and the Arab states to support their position on straits in return for the latter's support of the Latin position of a 200-mile zone. He also indicated that this understanding could be reconsidered if the U.S. indicated its support for coastal State resource jurisdiction out to 200 miles. He also ventured his view that the U.S. would have to compromise on the straits article by making more explicit the pollution control and navigational safety rules that the coastal State could apply. In response to his query as to whether submerged transit by submarines was really essential to U.S. security in the light of improved detection devices, he was assured that it was and would continue to be so. He stressed that if the United States would support the 200-mile principle (which he claimed over 60 States support), the U.S. could obtain freedom of navigation and overflight beyond 12 miles and a satisfactory solution of straits, as well as special treatment for migratory fish such as tuna within the zone. (On questioning, he reasserted that the freedom of navigation and overflight would have to be negotiated beyond 12 miles in connection with the 200 miles resource zone.) The coastal State could also have special rights regarding salmon beyond 200 miles. He said that it was impossible for Peru to accept any formula which did not involve 200 miles, and while he preferred a 200-mile territorial sea, he suggested that a 200-mile formula involving coastal State economic jurisdiction (with an exception for migratory fish), protection of navigation and overflight beyond 12 miles, and some arrangement for coastal State participation in scientific research would be acceptable.

In a direct approach early in the Seabed Committee meeting, Arias-Schreiber informed us that Peru would support our straits position if we could indicate some support for an outer boundary regarding marine resources of 200 miles. He emphasized that Peru recognizes that a universal 200-mile boundary would not be acceptable for everyone; however, it could be the maximum outer limit, and different regions might reach different solutions to this question.

Venezuela

Venezuelan representatives reiterated their support for a 12-mile territorial sea with innocent passage, a "patrimonial sea" beyond 12 miles in which freedom of

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navigation and overflight would be permitted, and free transit through and over international straits. With respect to straits, one Venezuelan representative volunteered that the Venezuelan Navy supports free transit and that his government will most likely also, but that the Head of his delegation informed him Venezuela was not prepared to make an official statement on this point until their entire LOS position was presented at the up-coming Caribbean LOS Conference. Venezuelan representatives discussed two consequences for a patrimonial sea concept in the Caribbean: First, a 200-mile resource zone would, if adopted, make the Caribbean a closed sea; second, a resource zone of 50 to 100 miles would make the Caribbean a semi-enclosed sea with the open area in the middle to be governed by an international authority. With respect to straits, Aguilar indicated Venezuela has not taken a position and stated that he appreciated the importance of free transit to the U.S. The Venezuelans have emphasized that any resource zone adopted for beyond 12 miles would include freedom of navigation and overflight and other high seas uses, as well as free transit through straits. Venezuelans have told us that of the Latin American states, only Brazil, Peru and Ecuador were holding firm for a 200-mile territorial sea. Argentina, Chile and Uruguay were urging a 12-mile territorial sea with a resource zone beyond that to 200 miles.

In separate conversations with Mr. Stevenson, Ambassador Aguilar (Venezuelan permanent representative to the UN) stressed that Venezuela was working closely with Colombia and Mexico to develop a compromise position to bridge the differences in view held by the United States and other Latin American countries. He reaffirmed Venezuela's position that the most important element in a possible settlement would be a coastal State economic zone beyond 12 miles with freedom of navigation and overflight expressly protected. While 200 miles had no practical significance for Venezuela in the Caribbean, he saw no possibility of compromising with the other Latin American states without referring to a 200-mile resource boundary. This would be necessary for ideological and domestic political reasons. In this connection, he indicated his view that it would be easier to protect migratory species within an economic resource zone if the 200-mile figure were used.

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Ambassador Aguilar told Mr. Stevenson that he wished that the United States had moved further on fisheries than our March 29 statement indicated. While the U.S. had moved far toward coastal State control, he thought that there was no possibility for the Caribbean countries' agreeing to anything other than an economic zone approach on fisheries. He personally was disposed to consider regulation of highly migratory fish by international organizations and some form of abstention from salmon fishing on the high seas. He preferred a system of obligating coastal States to impose reasonable license terms for foreign fishing to the extent that coastal States were not fully utilizing the resource. He thought that protection of other uses and compulsory dispute settlement could be provided for and felt that there would be little need for the coastal State to regulate scientific research (in a zone) if coastal States had full resource jurisdiction. He did feel, however, that it would be necessary to provide for coastal State participation and dissemination of the results of scientific research in an economic zone. He stressed that while the Caribbean countries might accept international elements as a limitation of coastal States rights in an economic zone, they would not do so now unless this would result in U.S. acceptance of a zonal concept.

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